

**In The Matter Of:**

*In re Applications of  
Liberty Cable Co., Inc.*

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*Behrooz Nourain  
Vol. 1, August 1, 1996*


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Federal Communications Commission	
Docket <b>96-41</b>	Exhibit <b>8</b>
Presented by <b>Liberty / Bureau</b>	
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[1]  
[2]  
[3] FEDERAL COMMUNICATIONS COMMISSION  
[4]  
[5] In re Applications of  
[6] LIBERTY CABLE CO., INC.  
[7] For Private Operational Fixed Microwave  
Service Authorizations and Modifications.  
[8]  
[9]  
[10] August 1, 1996  
[11] 1:45 p.m.  
[12]  
[13] Continued deposition of BEHROOZ  
[14] NOURAIN, taken by Time Warner Cable of New York  
[15] City, pursuant to Notice, at the offices of  
[16] Constantine & Partners, 909 Third Avenue, New  
[17] York, New York, before Jane M. Teller, a  
[18] Shorthand Reporter and Notary Public within and  
[19] for the State of New York.  
[20]  
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[1] **Nourain**  
[2] BEHROOZ NOURAIN, having been previously duly  
[3] sworn by a Notary Public, was examined and  
[4] testified further as follows:  
[5] Q: Mr. Nourain, good afternoon again.  
[6] A: Good afternoon to you too.  
[7] Q: I think we are treating this  
[8] deposition as a continuation of the one that was  
[9] taken of you in Washington a month or so ago and  
[10] therefore we're not going to ask that you be  
[11] sworn in again, but I want to remind you that  
[12] you are testifying here under oath and so you're  
[13] required under the penalties for perjury and so  
[14] on to tell the truth to the best of your  
[15] knowledge and belief. Do you understand that?  
[16] A: Yes.  
[17] Q: And again, as I think I probably did  
[18] at the commencement of the deposition of you in  
[19] this case in Washington, I want to advise you  
[20] that because you are testifying under oath, if  
[21] there's any question that I ask you that doesn't  
[22] seem clear to you, you have the right to tell me  
[23] that you don't understand the question and to  
[24] ask me to explain it. So please, feel free, if  
[25] it's necessary, to tell me that you don't

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[1] **Nourain**  
[2] understand the question before you answer it.  
[3] All right?  
[4] A: Okay.  
[5] Q: First, Mr. Nourain, some preliminary  
[6] matters. Can you tell me whether or not you  
[7] read or reviewed the deposition transcript of  
[8] any witness, other than yourself, in this  
[9] proceeding?  
[10] A: No.  
[11] Q: Have you discussed with any other  
[12] witness that person's deposition testimony in  
[13] this proceeding?  
[14] A: No.  
[15] Q: So, for example, you did not discuss  
[16] with Mr. Ontiveros what his testimony was when  
[17] he was deposed in this case?  
[18] A: That's correct.  
[19] Q: Have you discussed the substance of  
[20] any witness' testimony in this proceeding, other  
[21] than your own, with counsel?  
[22] A: No.  
[23] Q: I'm going to show you a copy of  
[24] what's called A Joint Motion by Bartoli Cable  
[25] Company and the Wireless Bureau for Summary

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*Nourain*

(1)  
(2) Decision. And I simply want to ask whether or  
(3) not you've read this document or a draft of it,  
(4) to your knowledge, before today.  
(5) **MR. BEGLEITER:** Should we mark it?  
(6) **MR. BECKNER:** No, I'm not going to  
(7) mark it.  
(8) **MR. BEGLEITER:** I think anything  
(9) you show to the witness should be marked.  
(10) **MR. BECKNER:** This particular  
(11) document has my markings on it and it  
(12) cannot be made an exhibit.  
(13) **MR. BEGLEITER:** Is your question  
(14) going to be have you ever seen it before?  
(15) **MR. BECKNER:** That's right.  
(16) **MR. BEGLEITER:** Why don't we just  
(17) answer it without marking it.  
(18) **A:** No, I don't recall seeing this at  
(19) all.  
(20) **Q:** And you don't recall seeing a draft  
(21) of this document either, I take it?  
(22) **A:** I don't remember anything about that  
(23) document, right. I don't recall seeing it.  
(24) **Q:** I'm going to show you what's been  
(25) marked as Exhibit 17 to Mr. Price's deposition,

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*Nourain*

(1) and I would first like you to tell me whether or  
(2) not you've seen this document before today.  
(3) **A:** Yes, I have seen this before today.  
(4) **Q:** Tell me when you saw it.  
(5) **A:** I recall, I don't know the exact  
(6) date, but it must have been last week or so when  
(7) I was here and Mr. Spitzer asked me to come here  
(8) to show me a document and that's when I saw it  
(9) first.  
(10) **Q:** And other than that instance, you  
(11) don't recall having seen this document; is that  
(12) correct?  
(13) **A:** That's correct, I don't recall  
(14) having seen this.  
(15) **Q:** Would you now just take a moment to  
(16) flip through the document, if you would,  
(17) please.  
(18) **A:** Okay.  
(19) **Q:** Now that you have had a chance to  
(20) look at the inside of it, do you recall ever  
(21) seeing any document that looks like this one,  
(22) not necessarily this particular document, but a  
(23) document that looks like this, that is, that has  
(24) lists of sites and path names and so on in the

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*Nourain*

(1)  
(2) format that this document has that you're  
(3) looking at right now?  
(4) **MR. BEGLEITER:** Are you including  
(5) or excluding the cover memorandum?  
(6) **MR. BECKNER:** I'm excluding the  
(7) cover memorandum.  
(8) **THE WITNESS:** Excluding?  
(9) **MR. BEGLEITER:** Look at the  
(10) remainder of it.  
(11) **A:** I've seen some documents with  
(12) coordinates, but I don't recall anything like  
(13) this, the latitude/longitude.  
(14) **Q:** I want to show you three other  
(15) documents, and just to move this along I'm going  
(16) to show you three of them at once. They've been  
(17) marked as Price Exhibits 18, 19 and 20. And I  
(18) want to ask you if you recall ever having seen  
(19) any of them before today.  
(20) **A:** This one, oh, these are pretty much  
(21) the same formats. On this document, this looks  
(22) familiar.  
(23) **Q:** Let me interrupt you a second.  
(24) **MR. BECKNER:** Let me note for the  
(25) record the witness is referring to Price

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*Nourain*

(1) Exhibit 20.  
(2) **Q:** And if you would, sir, just read the  
(3) page number.  
(4) **A:** FCC/CP 016261.  
(5) **Q:** So you're saying that that  
(6) particular page looks familiar to you?  
(7) **A:** These look familiar to me. These  
(8) are the Comsearch drawings which I have seen  
(9) that in application forms, they're filled out.  
(10) Those are familiar.  
(11) **Q:** I notice -  
(12) **A:** I don't recall these.  
(13) **Q:** Let's just stick with Exhibit 20 for  
(14) a second. I notice on some of the pages in  
(15) Exhibit 20 there is handwriting, handwritten  
(16) numerals and so on. Do you recognize any of  
(17) that handwriting?  
(18) **A:** No.  
(19) These I don't remember. This one I  
(20) don't remember.  
(21) Now, something like this looks  
(22) familiar. These are the inventory of some of  
(23) the licenses that at the time -  
(24) **MR. BEGLEITER:** Can we make a  
(25)

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(1) *Nourain*  
(2) note?  
(3) **MR. BECKNER:** Yes.  
(4) **A:** Yes, this is the inventory of the  
(5) actual transmitter sites and some of the related  
(6) receivers to those particular transmitters with  
(7) the coordinates.  
(8) **Q:** Could you just read the number at  
(9) the bottom of the page?  
(10) **A:** 016274.  
(11) **Q:** And that's the number of the page  
(12) that you've just been testifying about; is that  
(13) correct?  
(14) **A:** Yes. I'm saying that, I'm just  
(15) explaining what these are.  
(16) **Q:** That's fine. We just have to make  
(17) sure that the written record is clear so that we  
(18) know what page you're talking about when we go  
(19) back and read it later on.  
(20) **A:** FCC/CP 1026278, those are again,  
(21) those are the type of the drawings that I have  
(22) seen various, various one of them, which have  
(23) been, again, I don't know this particular one  
(24) been done by who, but it might have been one of  
(25) my engineers drawing that up. Shows the - just

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(1) *Nourain*  
(2) part of the network. Shows a drawing of the  
(3) microwave network.  
(4) And so would be FCC/CP 016279 and  
(5) FCC/CP 016280. Those are again all indication  
(6) of the microwave network, which again, I don't  
(7) know the handwriting on it, but I think that the  
(8) actual, you know, when this was generated might  
(9) have been generated either by Pepper & Corazzini  
(10) for Liberty Cable or by Comsearch. I don't  
(11) really recall. But it shows basically part of  
(12) the system at the time, 3/1/93, and those I'm  
(13) familiar with.  
(14) **MR. BECKNER:** I'll note for the  
(15) record that the witness is now looking at  
(16) Exhibit 19.  
(17) **A:** Exhibit 19, that's correct.  
(18) **Q:** Is there any particular page in  
(19) Exhibit 19 that you recognize?  
(20) **A:** I have a vague memory of this  
(21) document basically, which was the inventory of  
(22) the, as it says, inventory of the equipment. I  
(23) remember at some point I discussed that.  
(24) **Q:** And "this document" now, just to  
(25) make the record clear, is Price Exhibit 19?

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(1) *Nourain*  
(2) **A:** Right.  
(3) **Q:** So you remember discussing it. Do  
(4) you remember who you discussed it with?  
(5) **A:** No. I remember, I vaguely remember  
(6) that the document was sent and I looked at it  
(7) basically to compare the coordinates with what  
(8) we had on the Comsearch and check some of those  
(9) locations, check some of the address. That's  
(10) all I can remember about this.  
(11) **Q:** Okay. You have Exhibit 18 in front  
(12) of you. Exhibit 18 also has on a few pages some  
(13) handwriting, and if you'd just let me know if  
(14) you recognize any of the handwriting.  
(15) **A:** No, no, I don't remember any  
(16) handwriting on any of these pages. And again,  
(17) my only comments on this one would be that since  
(18) I vaguely remember the document 19, this is just  
(19) pretty much the same, so I can't say if I  
(20) remember or not that I received that one, so I'm  
(21) not going to make any definite comment that I  
(22) reviewed that document or not because they're  
(23) all similar.  
(24) **Q:** During the years 1993, 1994 and  
(25) 1995, was Pepper & Corazzini supposed to do an

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(1) *Nourain*  
(2) inventory like this on a regular basis, that is,  
(3) once a year or once every six months, do you  
(4) know?  
(5) **MR. BEGLEITER:** Lack of  
(6) foundation.  
(7) Answer if you can.  
(8) **A:** I don't recall that it was any  
(9) discussion that they provide inventory. All I  
(10) know is from what I saw today, those documents  
(11) are nothing but the - what's been -  
(12) application been filed on it, and what things  
(13) been licensed, which we, we already have the  
(14) license, so it's just a summary of what they  
(15) license and I don't think I requested it for  
(16) them. But they would consolidate it for their  
(17) own purposes and send a copy, that I don't know,  
(18) but I never was requested for that because all  
(19) the licenses was sent to us and we will have  
(20) that.  
(21) We did not - this did not give any  
(22) help to anything, basically, the licenses was  
(23) given and there's nothing about the coordinate  
(24) of this equipment, the system and all the data  
(25) in there was already done by Comsearch and I was

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**Nourain**

(1) aware of that, and most of the information they  
(2) got in the technical part was what I provide to  
(3) them through the Comsearch. They just made that  
(4) inventory list of the licenses, we will get  
(5) that.

(6) **Q:** Now, I think, if I understood you  
(7) right, you remembered receiving one of these,  
(8) and I think it was the one that's marked 18. Do  
(9) I have that right, the January 6th?

(10) **MR. BEGLEITER:** I'm going to  
(11) object.

(12) But answer if you can.  
(13) I think his testimony was a little  
(14) different.

(15) **Q:** I'm sorry, on one of these documents  
(16) I believe you testified that you thought you had  
(17) a recollection of having received it, because  
(18) you remembered discussing it with somebody and  
(19) I'm just trying to go back to whichever one it  
(20) was.

(21) **A:** No, I did not say I discussed it. I  
(22) said that I remember that when I look at one of  
(23) these particular, I think this was the - I  
(24) think it was 016211, what I just talked about a

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**Nourain**

(1) few minutes ago, and when I looked at it I  
(2) recognized the transmitter and the associated  
(3) receivers. And I say that, I recall that for  
(4) one reason, that it really struck me that I  
(5) might have seen that was - there are a couple  
(6) of other paths in there, namely, Stuyvesant and  
(7) Peter Cooper, for example, which they are not in  
(8) the system and I might have at some point looked  
(9) at it to see that if they are in the inventory  
(10) or not.

(11) That's all I remember. I remember  
(12) these two and this is I just - I haven't seen  
(13) these two particular names in a long time and I  
(14) just suddenly see it. So based on that, I am  
(15) presuming that I might have seen this. But  
(16) that's the only comment I have on this. Other  
(17) than that, I vaguely remember having seen these  
(18) documents overall.

(19) **Q:** And I take it that you don't know  
(20) yourself why Jennifer Richter prepared the ones  
(21) that have her name on them and why Mike Lehmkuhl  
(22) prepared the one that has his name on it?

(23) **A:** I don't know.

(24) **Q:** If you notice Price Exhibit 17,

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**Nourain**

(1) that's the 1995 inventory, explains on the first  
(2) page that the license status of each path is  
(3) indicated in this report by either a P (pending)  
(4) or a G (granted). The other inventories that  
(5) you've been shown do not seem to have that kind  
(6) of indication. Do you know of any reason why  
(7) the 1995 inventory would indicate both pending  
(8) and granted licenses?

(9) **A:** I don't even know about the  
(10) existence of these documents in the last weeks,  
(11) so how could I make any comment on it?

(12) **Q:** The question is, was there anything  
(13) else happening around February 1995 which might  
(14) have been responsible for Mr. Lehmkuhl  
(15) indicating in the inventory both granted  
(16) applications and pending applications, which is  
(17) what the document says he did?

(18) **MR. BEGLEITER:** Objection.  
(19) Answer if you can.

(20) **A:** I don't recall. I don't recall  
(21) having any conversation on that.

(22) **Q:** Do you recall there being any  
(23) confusion or uncertainty between the Pepper &  
(24) Corazzini lawyers and people at Liberty during  
(25)

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**Nourain**

(1) the period the end of 1994 and the beginning of  
(2) 1995 about the status of any applications, that  
(3) is, whether an application had been granted or  
(4) pending and so on?

(5) **MR. BEGLEITER:** I'll object.  
(6) But answer if you can.

(7) **A:** I don't recall anything like that.  
(8) The only thing I know is that by the end of  
(9) 1994, Federal Communications consolidated all  
(10) the licenses to the summarized license forms  
(11) that they decided to generate and any discussion  
(12) I had at that point was based on for that  
(13) purpose, that those licenses came in, and we had  
(14) discussion that things were consolidated.

(15) And today that I'm reading this  
(16) document, all I see that he, like as part of the  
(17) first page I guess Mr. Lehmkuhl is mentioning  
(18) that these are being consolidated and granted  
(19) and provided some of the licenses, he says that  
(20) in the second paragraph. That's the only thing  
(21) I can understand.

(22) **Q:** Do you recall whether or not at  
(23) about the time period the second half of 1994,  
(24) the first quarter of 1995, there was discovered  
(25)

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(1) **Nourain**

(2) some problem with the emission designators for  
(3) some of Liberty's applications that in that  
(4) regard needed to be fixed?

(5) **A:** Not the latter part of '94, but the  
(6) beginning of '95, at the first quarter of '95, I  
(7) would say that, during that time, that I got the  
(8) new Comsearch recoordination sheets which they  
(9) corrected emission designators and I got the  
(10) copy of the Comsearch corrections.

(11) **Q:** And do you know who determined that  
(12) the emission designators needed to be corrected?

(13) **A:** I don't correctly recall, but I  
(14) think at some point Comsearch found out that  
(15) they made an error on that and they  
(16) reordinated with the corrected emission  
(17) designators. All I know that the whole,  
(18) whatever document was in the third quarter was  
(19) coordinated, it was reordinated again at that  
(20) particular time.

(21) **Q:** But in any event, as far as you  
(22) know, this correction of these emission  
(23) designators was not related to any license or  
(24) application inventory that was put together by  
(25) Pepper & Corazzini?

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(1) **Nourain**

(2) **A:** My recollection is that the emission  
(3) designator which was part of the manufacturer's,  
(4) when you're looking at the PCN, there's a  
(5) manufacturer license for that particular  
(6) equipment, in this instance the transmitter,  
(7) which the related emission designator for that  
(8) particular transmitter apparently either changed  
(9) and the Comsearch wasn't informed of it, or they  
(10) just had an error of recording it incorrectly.

(11) Later on, when I looked at it at  
(12) some of the previous one, I recall that  
(13) previously, previous to that fourth quarter  
(14) of '94 when the original coordination was done,  
(15) there were other Comsearch coordination sheets  
(16) which came with that emission designator. But  
(17) later on when they changed it, I'm just assuming  
(18) at some point the emission designator changed  
(19) between the manufacturer and the FCC, who  
(20) authorizes that. But that is not part of what I  
(21) provided. So that was part of the Comsearch's  
(22) service. So they decided they have to  
(23) re-coordinate it.

(24) All I know, I got the complete  
(25) recoordination sheet again and to me it was just

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(1) **Nourain**

(2) some correction taking place. That's all I  
(3) recall about that particular document.

(4) **Q:** Is there a place where files are  
(5) kept in your office or in the operations offices  
(6) that are where your office is located?

(7) **A:** Well, every one of our offices has  
(8) cabinet spaces and we just file our documents in  
(9) there.

(10) **Q:** So there's no central place in that  
(11) building where all of your files were kept; is  
(12) that right?

(13) **A:** By files, you mean what kind of  
(14) files?

(15) **Q:** Anything, correspondence, licenses,  
(16) engineering work.

(17) **A:** Okay. The FCC applications which  
(18) was filed and comes to me through Pepper &  
(19) Corazzini, they were all filed generally into  
(20) one cabinet space. Any other correspondence, it  
(21) will come to my office and I have a folder for  
(22) it and I just file them and they stay within  
(23) three or four cabinets which is in my office.  
(24) Any engineering report, anything related to  
(25) engineering or my work is kept in my office.

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(1) **Nourain**

(2) **Q:** And you're personally in charge of  
(3) those files?

(4) **A:** I'm sorry?

(5) **Q:** You're personally in charge of those  
(6) files?

(7) **A:** I wouldn't say I'm personally in  
(8) charge of those files. My files is open, the  
(9) door is open, it's never locked. If somebody  
(10) needs to take it, they have the liberty to do  
(11) that.

(12) **Q:** Do you have any reason to believe  
(13) that you did not receive what's been marked as  
(14) Price Exhibit 17?

(15) **A:** Not whatsoever. I'm not saying I  
(16) have not received it, I just don't recall.

(17) **Q:** I understand. If you had received  
(18) this document -

(19) **A:** Which one?

(20) **Q:** Price 17.

(21) **A:** Yes.

(22) **Q:** - can you tell us what you would  
(23) have done with it? Would you have read it or  
(24) would you have simply filed it away? I'm just  
(25) illustrating what my question calls for.

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**Nourain**

[1] A: Most of the Pepper & Corazzini  
[2] document that I received, I might just glance  
[3] through it because to me it was just, they are  
[4] reporting the job that they were doing and my  
[5] understanding was they're getting paid good  
[6] money to do their job. So that was a report and  
[7] I don't see, sometime I have to go over them.  
[8] Particularly, they say that inventory of 18 GHz  
[9] license issued on this document, that is not  
[10] something that I do not have already. It's  
[11] been, if there is a license, the license don't  
[12] go to Pepper & Corazzini, it come to my office,  
[13] the communication director directly sends it to  
[14] Liberty Cable. So therefore they to me imitate  
[15] what we already have. So therefore I might just  
[16] glance through it and it's more of their  
[17] document that would be helpful to me. I already  
[18] have the licenses, So I might have just glanced  
[19] through it.

[20] Q: And once you had glanced through it,  
[21] would you have then put it in your file?

[22] A: Oh, you mean this document?

[23] Q: Sure.

[24] A: If I looked at it, sure. Nothing

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**Nourain**

[1] stays away or be thrown out. If we have it, we  
[2] put it in the file.

[3] Q: Were you aware that there were  
[4] requests for production of documents that were  
[5] directed to Liberty in this proceeding, or that  
[6] Liberty was asked to produce certain documents  
[7] in this case; were you aware of that?

[8] A: My recollection was that from our,  
[9] from Constantine & Partners, they were requested  
[10] people come in and take some documents.

[11] Q: And did people come in and look  
[12] through your files to take some documents?

[13] A: People come in. I showed them where  
[14] my files are and I told them feel free.

[15] Q: Since the time that you testified  
[16] you did see this document a couple of weeks ago,  
[17] and we're talking about Price Exhibit 17, did  
[18] you have occasion to look in your files to see  
[19] whether or not there was in fact a copy of that  
[20] document in your files?

[21] A: I have not looked at that at all.

[22] REQ MR. BECKNER: Again, counsel, as I  
[23] did with Mr. Price, I would make a formal  
[24] request on the record that the witness

Page 23

**Nourain**

[1] determine between now and tomorrow, if  
[2] possible, whether or not any of Price  
[3] Exhibits 17 through 20 are in fact in his  
[4] files that he's testified about in his  
[5] office.

[6] Q: Price Exhibit 17 says at the last  
[7] paragraph on the first page that it's telling  
[8] you not only what licenses Liberty has, but also  
[9] it's telling you about pending applications. Do  
[10] you see that there in the last paragraph?

[11] A: Well, it tells me that, as you  
[12] mentioned, what is mentioned, what license is  
[13] granted and what license is pending; not the  
[14] application.

[15] Q: Let me just ask you this. As you  
[16] sit here today, what understanding do you have  
[17] with respect to a pending license? Is it your  
[18] understanding that a pending license means that  
[19] Liberty has a license or doesn't have a license?

[20] A: The pending license means that  
[21] Liberty doesn't have the license.

[22] Q: Now, if you turn to the next page of  
[23] the document that has 016140 at the bottom, it  
[24] says, "Liberty Cable pending applications and

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**Nourain**

[1] STAs." There are four addresses here which  
[2] don't have call signs and have the word "new"  
[3] written there. Do you see that, 30 Waterside,  
[4] 335 Madison?

[5] A: Yes, I see that.

[6] Q: Are all these other addresses here  
[7] that have call signs, are they locations of  
[8] Liberty transmitters?

[9] A: That's correct.

[10] Q: Is there now a transmitter at 30  
[11] Waterside?

[12] A: That is correct.

[13] Q: And what about 335 Madison?

[14] A: That's correct.

[15] Q: And what about 767 Fifth Avenue?

[16] A: Yes.

[17] Q: So I take it, then, that at the time  
[18] this document we're looking at was prepared,  
[19] it's reporting that new applications were filed  
[20] for these three addresses; is that right?

[21] A: It doesn't say that new applications  
[22] filed. I don't understand the question.

[23] Q: It's correct, is it not, that when a  
[24] transmitter is licensed it gets a call sign?

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[1] **Nourain**  
[2] A: When it's licensed, it gets a -  
[3] Q: When you get a license for a  
[4] transmitter, that license has a call sign for  
[5] that transmitter; is that correct?  
[6] A: That's correct.  
[7] Q: So if you have a transmitter  
[8] location with no call sign and the word "new" in  
[9] it, does that tell you that that transmitter is  
[10] not yet licensed?  
[11] A: No, that does not tell me that.  
[12] Q: What does it tell you, if anything?  
[13] A: The "new" means that we are not  
[14] already having an existing transmitter which  
[15] we're adding the receiver to it under the same  
[16] call sign. The "new" means that this is a  
[17] transmitter which is newly filed, it has STA on  
[18] it or it's going to be licensed, it's a new  
[19] transmitter has been filed, therefore after it  
[20] gets licensed, there would be a call sign  
[21] assigned to it.  
[22] Q: But as of the time this document was  
[23] done, when it says "new" it means that it hadn't  
[24] yet been licensed as of that time, right?  
[25] A: Well, the only answer I will have in

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[1] **Nourain**  
[2] there, the answer is no, not because of "new,"  
[3] because it says "granted." There's no "granted,"  
[4] not because the new.  
[5] Q: And also there's no STA, according  
[6] to this document?  
[7] A: That's what the document says, yes.  
[8] Q: Now, are you aware of the FCC  
[9] requirement that the license, or a copy of the  
[10] license be actually posted or taped up to the  
[11] wall next to the transmitter?  
[12] MR. BEGLEITER: Let me state my  
[13] objection. I think it's going beyond what  
[14] the ALJ ordered, I think it has nothing to  
[15] do with the preparation, knowledge or use  
[16] of the memorandum. But I'll permit him to  
[17] answer.  
[18] A: I know two ways. One is generally  
[19] speaking, yes, the licenses should be posted at  
[20] the transmitter locations or kept at one  
[21] location, at the transmit locations. But posted  
[22] means we're not posting it attached to the  
[23] equipment, which maybe is on top of the roof but  
[24] is at the location, at the site. Every  
[25] transmitter location that we have there is a

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[1] **Nourain**  
[2] license, copies of the license attached to that  
[3] particular transmitter.  
[4] Q: So, for example, at 205 East 64th  
[5] Street, the Bristol Plaza, what you're saying is  
[6] there is a license or a copy of the license  
[7] there as well as in your files in your  
[8] operations center?  
[9] A: That is correct.  
[10] Q: Let's just turn to another page  
[11] inside this document, the one with production  
[12] numbers 016147. Windsor Court, that's a  
[13] location of a Liberty transmitter; is that  
[14] correct?  
[15] A: That's correct.  
[16] Q: And these various addresses that are  
[17] listed in the column are addresses of receivers  
[18] that are supplied from the Windsor Court  
[19] transmitter; is that correct?  
[20] MR. BEGLEITER: I'm going to  
[21] object.  
[22] You can answer if you can.  
[23] A: Well, those were already activated.  
[24] They are the receivers. These are the name of  
[25] the receivers. To answer your question, yes.

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[1] **Nourain**  
[2] Q: Now, the first two here identified  
[3] as Resident Hall, NYU campus, and Greenberg  
[4] Hall, NYU campus, with the status of P which  
[5] means pending, those two addresses, according to  
[6] this report, were not yet licensed as of the  
[7] date of the report; would that be your  
[8] understanding?  
[9] A: According to that report, yes.  
[10] Q: So if you had read this report  
[11] sometime after February 24th, 1995, you would  
[12] have understood from it that these addresses  
[13] with a P in the status column were addresses for  
[14] which a license had not yet been received; is  
[15] that right?  
[16] A: For the license, yes, the license  
[17] have not been received.  
[18] Q: Go back to the first page of the  
[19] exhibit. If you notice there that in the second  
[20] paragraph it says, "Consequently, Liberty is no  
[21] longer operating under any STAs." Do you  
[22] understand STAs to mean the special temporary  
[23] authority that you can get before you get a  
[24] license?  
[25] A: That's correct.



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**Nourain**

[1] **Q:** Now, with the understanding that  
[2] Liberty is, according to this document here, not  
[3] operating under any STAs as of February 24th,  
[4] 1995, and the indication inside the document  
[5] that paths to certain addresses are in a pending  
[6] status, would there be any other way that you  
[7] know of by which Liberty would be authorized to  
[8] serve these addresses, as of the date of this  
[9] memorandum?

[10] **MR. BEGLEITER:** I'll object to the  
[11] question. If the witness understands it,  
[12] he can answer.

[13] **A:** You mean after I reviewed this  
[14] document today?

[15] **Q:** No. I'm talking about if you had  
[16] looked at this document at about February 24th,  
[17] 1995, and you saw, for example, the document  
[18] says the Resident Hall, NYU campus, is a pending  
[19] application, we looked at that, right? And you  
[20] read that the document said Liberty is no longer  
[21] operating under STAs.

[22] So the question is, for example,  
[23] with respect to this Resident Hall, NYU campus,  
[24] given that the application is pending and given

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**Nourain**

[1] that the lawyer has said there are no STAs,  
[2] would there be any other reason for you to  
[3] believe that a microwave path to the Resident  
[4] Hall, NYU campus, could legally be operated?

[5] **A:** Of course not.

[6] **MR. BEGLEITER:** I had an

[7] objection. But the witness can answer.

[8] **A:** I understood what you were saying.

[9] Of course not.

[10] **Q:** Now, you've testified that you  
[11] maintained a file of licenses in the offices,  
[12] the operations offices, correct?

[13] **A:** I mentioned that I have copies of  
[14] the licenses which was all consolidated  
[15] generally in 1994 in my office, in the file in  
[16] my office; not the operations office, in my  
[17] office.

[18] **Q:** Okay. I'm sorry, it was in your  
[19] office.

[20] In 1994 or the first quarter of  
[21] 1995, did you also maintain any kind of file or  
[22] chart or other record of the status of  
[23] applications that had been filed, that is,  
[24] similar to what Exhibit 17 is?

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**Nourain**

[1] **A:** No, I did not.

[2] **Q:** You already testified that your  
[3] files of course were unlocked and your office  
[4] was open, so that someone else could come into  
[5] your office and look at a file if that person  
[6] wanted to, correct?

[7] **A:** Well, so to speak, yes. But it's  
[8] not that anybody just comes right in there and  
[9] goes into the file and take it. All I merely  
[10] mentioned that it's not something locked and  
[11] anybody has to ask me a question to come in. If  
[12] I am somewhere and somebody needs something to  
[13] ask me, okay, go over there, that's the place,  
[14] pick it up. I don't want to give you the  
[15] impression that it's just in front and anybody  
[16] can come and take something.

[17] The question I don't understand  
[18] unless you're implying something. You have to  
[19] elaborate on that.

[20] **Q:** If you had received a document like  
[21] Exhibit 17, would you have had any reason to  
[22] give a copy of that document or the document  
[23] itself to Mr. Ontiveros, for example?

[24] **A:** No.

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**Nourain**

[1] **Q:** And based on the division of  
[2] responsibilities between yourself and  
[3] Mr. Ontiveros as far as you know, he would not  
[4] have had a reason to go look at a document like  
[5] Exhibit 17?

[6] **A:** No.

[7] **Q:** Do you know who Steve Coran is?

[8] That's C-O-R-A-N.

[9] **A:** No, I don't.

[10] **Q:** It's not a name that's familiar to  
[11] you?

[12] **A:** No, it's not.

[13] **Q:** Exhibit 17 lists, among the people  
[14] to whom the memorandum is addressed in addition  
[15] to Mr. Price and yourself, Tom Courtney at  
[16] Comsearch and the 1808 Correspondence File. Do  
[17] you have any idea what the 1808 Correspondence  
[18] File is?

[19] **A:** No, I do not.

[20] **Q:** I take it it's not a file name that  
[21] you maintain?

[22] **A:** I don't have any name for any of my  
[23] files except I just write up there "FCC" or  
[24] "microwave systems." I have my own names for

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(1) **Nourain**  
(2) my own files.  
(3) **Q:** I'm going to show you a document  
(4) that's been marked as Exhibit 2 to Mr. Price's  
(5) deposition. I do not think that we've shown it  
(6) to you before. It's a memorandum addressed to  
(7) John Tenety, Tony Ontiveros and you for Peter  
(8) Price and has a handwritten date of July 13,  
(9) 1995.  
(10) And I simply want to ask you first  
(11) if you recall having received that memorandum or  
(12) seen a copy of it.  
(13) **A:** I don't exactly remember.  
(14) **MR. BEGLEITER:** It's more than one  
(15) page - before I do anything, you want him  
(16) to go beyond the first page or not?  
(17) **MR. BECKNER:** If you want to note  
(18) for the record that the document has more  
(19) than one page to it, that's fine.  
(20) **MR. BEGLEITER:** The witness is  
(21) looking at the first page. Okay.  
(22) **A:** As I said, I don't recall exactly  
(23) this memorandum but I know a lot of activities  
(24) is taken after that and that they - that we got  
(25) Constantine & Partners, and John Tenety got

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(1) **Nourain**  
(2) involved too, to look to better streamline the  
(3) process of FCC.  
(4) **Q:** Let me just ask you to look at Price  
(5) Exhibit 3, which I think we established was  
(6) attached to Exhibit 2, and see if that refreshes  
(7) your recollection at all.  
(8) **A:** Oh, yes, I remember these, exactly,  
(9) that's what I mentioned. I don't remember  
(10) particularly that letter but I remember what  
(11) that letter, after I read it today, what that  
(12) letter started, to have a better streamline.  
(13) Yes, I've been involved with that, I know that.  
(14) **Q:** If you had any of these inventories  
(15) like Price Exhibit 17 in your file at the time  
(16) that you received this communication from  
(17) Mr. Price, would you have used the inventory to  
(18) try to answer his questions?  
(19) **A:** No, I did not.  
(20) **Q:** Well, I know you said you hadn't  
(21) seen this. The question is, if it had been  
(22) there, do you think you would have used it?  
(23) **MR. BEGLEITER:** Objection.  
(24) Answer if you can.  
(25) **A:** If I have seen that, that was not

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(1) **Nourain**  
(2) necessarily on the document of the 25th, if I  
(3) have seen that document of 25th of February,  
(4) there would be no need to go through May to  
(5) July 13 of '95 of Mr. Price's memo. Everything  
(6) would have been corrected right at that point.  
(7) That's my answer to your question.  
(8) **Q:** I may have already asked this, and  
(9) if I did, forgive me. I want the record to be  
(10) clear on this. To your knowledge, was Pepper &  
(11) Corazzini ever directed to, on a regular  
(12) basis - once a year, once every six months,  
(13) whatever - to furnish Liberty with an inventory  
(14) of all of its licenses?  
(15) **MR. BEGLEITER:** Objection. It was  
(16) asked and answered and there are other  
(17) objections as well. But I'll let the  
(18) witness answer if he can.  
(19) **A:** Once a year, inventory list doesn't  
(20) tell me it's a regular. A regulatory list is  
(21) when somebody generates it often. But as I  
(22) mentioned before if they've done that, it was  
(23) more for their own, the way I read these  
(24) documents today, it's more for their own  
(25) advantage to know exactly how they keep their

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(1) **Nourain**  
(2) inventory intact. Because this information  
(3) after I read today is nothing, except the Price  
(4) 17, which I don't recall ever seeing it, the  
(5) others, there are nothing to show me today that  
(6) the licenses were issued which have already have  
(7) that on my possession.  
(8) **Q:** I'd like you to take a look at Price  
(9) Exhibit 16 and first tell me whether or not you  
(10) recall ever having seen that document before  
(11) today.  
(12) **A:** What was the question?  
(13) **Q:** Have you ever seen this before  
(14) today?  
(15) **A:** No, I don't.  
(16) **Q:** The document appears to refer to  
(17) some sort of cross-checking between Lehmkuhl's  
(18) inventory listing and the listing of this person  
(19) Steve Coran. Do you know, to your knowledge, do  
(20) you know of any reason why the cross-checking  
(21) that's mentioned here would have been done?  
(22) **A:** No.  
(23) **Q:** Not something that you asked to be  
(24) done or as far as you know that anybody else at  
(25) Liberty asked to have done?

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**Nourain**

- (1)  
(2) **A:** That's correct, not that we  
(3) initiated any of these things.  
(4) **Q:** Let's take a look at some of these  
(5) other exhibits. Let's take a look at Price  
(6) Exhibit 21.  
(7) **A:** Okay.  
(8) **Q:** Do you recognize the format of this  
(9) document?  
(10) **A:** Yes, I do.  
(11) **Q:** Do you remember seeing this specific  
(12) document that's in front of you?  
(13) **A:** I see the document, this type of  
(14) document, once a week because it's generated.  
(15) What do you want me to answer? Say no, it's not  
(16) true? Yes, yes, but I don't recall now. But  
(17) I've seen it. Those type of questions, yes, I  
(18) would seen it in the fact that I see every  
(19) weekly report. If I've seen this document?  
(20) Based on all that knowledge, I would say yes.  
(21) But do I remember right now that I've seen this  
(22) document? I would answer it would be no.  
(23) **Q:** And you assist Mr. Ontiveros in  
(24) preparing this document; is that correct?  
(25) **A:** What do you mean by "assist"?

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**Nourain**

- (1)  
(2) **Q:** Do you give him some of the  
(3) information that eventually finds its way into  
(4) this document?  
(5) **A:** The information I give him doesn't  
(6) directly go into this document because there is  
(7) no indication of where the microwave system has  
(8) been installed. What aids Mr. Ontiveros is that  
(9) documents generally give him the better  
(10) understanding of the whole process, which  
(11) microwave would be a little portion of it,  
(12) including distribution, marketing, everything  
(13) would do that.  
(14) So I will give him my portion of  
(15) it. But my final information doesn't directly  
(16) go into this document.  
(17) **Q:** Looking at the first page of  
(18) Exhibit 21, the address 16 West 16th Street,  
(19) under the "Status" column is the words  
(20) "Microwave Installation." Would that be the  
(21) kind of information that you would be giving  
(22) Mr. Ontiveros?  
(23) **MR. BEGLEITER:** I'm going to  
(24) object. Lack of foundation.  
(25) Answer if you can.

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**Nourain**

- (1)  
(2) **A:** This particular one?  
(3) **Q:** Yes.  
(4) **A:** Right now I don't recall why it says  
(5) microwave installation. If that's what your  
(6) question is, that's my answer.  
(7) **Q:** Do you have any understanding as you  
(8) sit here today as to what that particular entry  
(9) means on this document?  
(10) **A:** Whenever, to answer that question  
(11) generalizing it, when talk about microwave  
(12) installation, it might be a number of reasons,  
(13) starting from building doesn't permit us to  
(14) install the antenna or we have the other  
(15) equipment arrival problems. Everything related  
(16) to microwave that prevents us to start certain  
(17) project in general. That would be at some point  
(18) if it is the critical items, would be inserted  
(19) into this document. But for practical purposes,  
(20) it's just information that why something doesn't  
(21) go, it would be some beyond our control could be  
(22) there, it could be equipment problem.  
(23) The marketing? You have to ask  
(24) marketing.  
(25) **Q:** I was asking you only about the

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**Nourain**

- (1)  
(2) microwave installation part of that.  
(3) **A:** Okay.  
(4) **Q:** Do you know what "complete" means in  
(5) the "Status" column?  
(6) **A:** Do I know what "complete" means?  
(7) **Q:** In the "Status" column on this  
(8) chart.  
(9) **A:** No.  
(10) **Q:** Do you know why a building would be  
(11) listed under "current Projects" as opposed to  
(12) under a calendar year such as 1995 on page 2 of  
(13) this document?  
(14) **A:** You need to repeat the question.  
(15) **Q:** Do you know why a building, just in  
(16) general why a building would be listed under  
(17) "Current Projects" on the first page as opposed  
(18) to being listed under, say, 1995 on the second  
(19) page?  
(20) **MR. BEGLEITER:** I object again.  
(21) But you can answer the question.  
(22) **MR. BECKNER:** It was a do-you-know  
(23) question.  
(24) **MR. BEGLEITER:** Well, okay. I'll  
(25) let him answer.

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[1] **Nourain**  
[2] A: If you don't know that, I can  
[3] probably give you a couple of minutes. I can  
[4] read it and I have to find out myself.  
[5] **MR. BEGLEITER:** That's the nature  
[6] of my objection. No foundation as to what  
[7] he knew.  
[8] A: You want me to review that and  
[9] explain it to you. I'll do that, just give me a  
[10] minute, please.  
[11] **MR. BEGLEITER:** The witness should  
[12] only answer what he knows.  
[13] A: I don't know. I don't know the  
[14] answer to that.  
[15] Q: That's fine.  
[16] Looking at page 2 of this report,  
[17] can you tell me whether or not the fact that  
[18] that address is listed on page 2 under the year  
[19] 1995, as it is here, or does that tell you  
[20] whether or not customers are being served in  
[21] this particular address?  
[22] A: I don't know. I don't generate  
[23] that; I don't know, I can't answer.  
[24] Q: How is it that you come to see these  
[25] reports every week? I think you testified that

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[1] **Nourain**  
[2] you see them every week.  
[3] A: As part of the operation review, me  
[4] and Mr. Ontiveros will go over all the projects  
[5] just about every week for him to generate, as I  
[6] stated in my last deposition, for his weekly  
[7] meetings. So I would - part of it would be  
[8] status of the microwave examples for him to  
[9] generate that, so we will review the projects.  
[10] Q: But you do that before, in order  
[11] that he has the information to make the report;  
[12] isn't that correct?  
[13] A: We do the review before he finalizes  
[14] his report, that's correct.  
[15] Q: But I take it you also then see a  
[16] copy of the final report; is that right?  
[17] A: That is correct. A copy of the  
[18] final report come to my desk.  
[19] Q: And do you do anything with that  
[20] final report once you get it?  
[21] A: No.  
[22] **MR. BECKNER:** I want to take a  
[23] break.  
[24] (Recess taken.)  
[25] Q: Mr. Nourain, do you recall that

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[1] **Nourain**  
[2] Liberty filed a number of STA requests on  
[3] May 4th, 1995 which you signed?  
[4] **MR. BEGLEITER:** I'm going to object  
[5] to the question. It's compound.  
[6] Answer it if you can.  
[7] **MR. BECKNER:** No, we'll break it  
[8] up.  
[9] A: Would you repeat the date?  
[10] Q: Yes. Do you recall the fact that  
[11] Liberty filed a number of STA requests on  
[12] May 4th, 1995?  
[13] A: Yes.  
[14] Q: And do you recall signing those  
[15] requests?  
[16] A: I signed a lot of things. I have to  
[17] see it to see if I've signed it or not.  
[18] Q: Okay. That's fine. I'm going to  
[19] show you a copy of one such request. You're  
[20] certainly free to read the entire document. I'm  
[21] not going to ask you a lot about it.  
[22] A: First of all, every signature that I  
[23] did I would date that myself. I'm pretty  
[24] positive this is one of those documents that I  
[25] have signed document that I previously testified

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[1] **Nourain**  
[2] in other deposition that I give them bunch of  
[3] signed documents. This is definitely one of  
[4] those.  
[5] Q: So we're clear, I think in your  
[6] previous deposition you testified that you  
[7] signed FCC Form 402 in blank and gave them to  
[8] Mr. Lehmkuhl.  
[9] A: I testified I did that as well as  
[10] last page of STAs.  
[11] Q: Fine. Then that clears up that  
[12] matter.  
[13] **MR. BEGLEITER:** This MTA for the  
[14] record is dated May 3.  
[15] A: 1994.  
[16] Q: Do you recall?  
[17] **MR. BEGLEITER:** Can we just later  
[18] on have this marked if it's the only one  
[19] you're going to show him? It's only three  
[20] pages. You might as well make it Nourain  
[21] Number 9.  
[22] **MR. BECKNER:** That's fine. Why  
[23] don't we do that now and before I leave if  
[24] you don't mind making me a copy of it.  
[25] (Nourain Exhibit 9, MTA dated

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**Nourain**

(1) 5/3/94, was marked for identification.)  
(2) **Q:** Do you recall whether or not you or,  
(3) to your knowledge, anyone else at Liberty asked  
(4) Mr. Lehmkuhl to file STA requests on or about  
(5) May 4th, 1995?

(6) **MR. BEGLEITER:** I'm going to  
(7) object. First of all, this is a compound  
(8) question; himself or anyone else. I don't  
(9) know what a yes or no would mean in that  
(10) situation.

(11) **MR. BECKNER:** I could then follow  
(12) up.

(13) **MR. BEGLEITER:** I'm going to permit  
(14) this to be answered assuming you're going  
(15) to connect this to the Lehmkuhl inventory  
(16) we're here for questioning today,  
(17) according to the judge's order.

(18) **MR. BECKNER:** Of course.

(19) **MR. BEGLEITER:** And I hope it's  
(20) done very soon or I will direct the  
(21) witness, if I do not see a nexus, I will  
(22) direct the witness not to answer. Are you  
(23) going to restate the question?

(24) **THE WITNESS:** I need the question  
(25)

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**Nourain**

(1) repeated, please.  
(2)

(3) **Q:** Do you recall whether or not you  
(4) directed Mike Lehmkuhl or anyone else at Pepper  
(5) & Corazzini to file any STA requests on or about  
(6) April 1995?

(7) **A:** I don't recall.

(8) **Q:** Do you know whether or not anyone  
(9) else at Liberty made such a request of Lehmkuhl  
(10) or anyone any other Pepper & Corazzini lawyer?

(11) **A:** At what date?

(12) **Q:** Same date.

(13) **A:** Repeat the date, please.

(14) **Q:** In the period April up till May 3rd,  
(15) 1995.

(16) **A:** I don't recall.

(17) **Q:** Do you know whether or not there's  
(18) any link between the filing of Liberty's STA  
(19) requests on May 4th, 1995 and Mr. Lehmkuhl's  
(20) preparation of this memorandum that's been  
(21) marked as Price Exhibit 17?

(22) **A:** I didn't catch the first part of  
(23) your question.

(24) **MR. BECKNER:** Would you read it  
(25) back, please.

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**Nourain**

(1) (The record was read.)  
(2)

(3) **A:** I have no idea.

(4) **Q:** In your previous testimony, you said  
(5) that after, and I'll be glad to show it to  
(6) you -

(7) **MR. BEGLEITER:** Give me a page  
(8) number.

(9) **MR. BECKNER:** Pages 77 to 78.

(10) **Q:** In your previous testimony, you said  
(11) that after you learned that Liberty was serving  
(12) some buildings by microwave without  
(13) authorization, you were surprised and you called  
(14) Michael Lehmkuhl. Did Mike Lehmkuhl, in that  
(15) conversation, make any mention of this  
(16) February 24th memorandum that's been marked as  
(17) Exhibit 17, to your recollection?

(18) **A:** I don't recall that. All I know, I  
(19) was very upset with him as finding what I  
(20) testified, and I would definitely remember if he  
(21) ever mentioned something like that. But it  
(22) wasn't a very pleasant call with him.

(23) **Q:** So you don't recall him telling you  
(24) that I sent you a memorandum earlier this year  
(25) advising you of what applications were pending

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**Nourain**

(1) and what applications were granted?  
(2)

(3) **A:** Absolutely not.

(4) **Q:** He said nothing like that?

(5) **A:** Not that I recall.

(6) **Q:** I'd like you to take a look one  
(7) further time at the first page of Price  
(8) Exhibit 17, that's the February 24th, 1995  
(9) paper. The first page says in part that the  
(10) applications that had been pending for over two  
(11) years have finally been granted. Consequently  
(12) Liberty is no longer operating under any STAs.

(13) As you sit here today, do you recall  
(14) whether or not on or about the date of this  
(15) memorandum knowing that there were applications  
(16) that had been pending for over two years that  
(17) were recently granted?

(18) **MR. BEGLEITER:** Could you repeat  
(19) that question, please.

(20) (The record was read.)

(21) **MR. BEGLEITER:** I'm going to  
(22) object.

(23) Answer it if you can follow it.

(24) **A:** The only thing I remember about two  
(25) years as there were some modified applications

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(1) **Nourain**  
(2) which was beyond two years, which had to do with  
(3) changing of the - some technical information,  
(4) which I testified back that required  
(5) modifications and consequently going through  
(6) recoordination process, and since those  
(7) particular paths and the receivers that were  
(8) already installed under a certain license, they  
(9) have to modify it, they have to go through the  
(10) all modification. Therefore, according to  
(11) Pepper & Corazzini, they have to have the STA  
(12) applied for them and that's what they were doing  
(13) during '92, '93 and '94. And those are the ones  
(14) that finally I know that finally we, at some  
(15) point we discussed that.  
(16) **MR. BEGLEITER:** If there were any  
(17) discussions that were involved with  
(18) attorney-client privilege matters -  
(19) **THE WITNESS:** No.  
(20) **A:** Finally, they had already been  
(21) modified and the modification was on the '94  
(22) licenses, consolidated licenses that I got, all  
(23) those technical changes that were under previous  
(24) licenses that needed to be changed, they were  
(25) modified.

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(1) **Nourain**  
(2) **MR. BEGLEITER:** To the extent that  
(3) question called for attorney-client  
(4) privilege, I want to note my objection.  
(5) But you can answer.  
(6) **A:** But I do not recall I talked to him  
(7) on February time or January time. I remember  
(8) sometime we discussed those modified  
(9) applications.  
(10) **Q:** And if I understand you correctly,  
(11) what you're saying is that you believe that what  
(12) is being referred to here are those technical  
(13) modifications which finally were approved in  
(14) late 1994?  
(15) **A:** No, I'm not saying that. I'm not  
(16) making any comment about this. This one I  
(17) haven't seen till last week. I'm just saying if  
(18) there is anything with regard to the two years  
(19) pending STAs, that's what it was, pending STAs.  
(20) In other words, it wasn't any building that we  
(21) constructed and it was under STA run for two  
(22) years or so. Or if it was, it was some of those  
(23) applications from '91, licenses from '91 were  
(24) incorrect and I reviewed them and I corrected  
(25) them. Therefore they had to be applied for a

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(1) **Nourain**  
(2) license and that's the only thing that I'm  
(3) talking about.  
(4) I'm not even talking about this  
(5) document at all. That one I don't recall; this  
(6) document I don't recall.  
(7) **MR. BEGLEITER:** To the extent that  
(8) those previous answers revealed advice  
(9) from Pepper & Corazzini, they were  
(10) unresponsive to the question that was  
(11) asked, and I want to note that for the  
(12) record and I'm asking that they be  
(13) stricken.  
(14) **MR. BECKNER:** I would object to  
(15) their being stricken. I would also note  
(16) that it wasn't the intent of my question  
(17) to seek attorney-client communication.  
(18) And it would not be my intention - and I  
(19) can't speak for any other party, of  
(20) course - to argue that there's been a  
(21) waiver of whatever privilege as a result  
(22) of Mr. Nourain's answer. And on that  
(23) basis I would say that striking a portion  
(24) of his answer would make it kind of  
(25) unintelligible and is otherwise

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(1) **Nourain**  
(2) unnecessary.  
(3) **MR. BEGLEITER:** Just for the  
(4) record, I jealously guard attorney-client  
(5) privilege, as you know from this  
(6) proceeding, and with your representation  
(7) as far as you're concerned, and assuming  
(8) no other party makes any kind of motion,  
(9) the answer can stay the way it is.  
(10) **MR. BECKNER:** Very good.  
(11) Off the record.  
(12) (Discussion off the record.)  
(13) **Q:** I want to show you what's been  
(14) marked previously as Stern Exhibit 3. It's a  
(15) memorandum addressed to Bruce McKinnon from  
(16) Peter Price dated February 26th, 1992. And I  
(17) just want to ask you if you recall ever having  
(18) seen that document before.  
(19) **A:** No, I don't recall.  
(20) **Q:** Was that date prior to your  
(21) commencing employment with Liberty, by the way?  
(22) **A:** That's correct.  
(23) **Q:** That's why I thought you might have  
(24) seen the document anyway for one reason or  
(25) another.

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(1) **Nourain**  
(2) **MR. BECKNER:** I don't think I have  
(3) any further questions of you.  
(4) **Mr. Nourain.** And I thank you for your  
(5) patience and courtesy.  
(6) **THE WITNESS:** You're welcome.  
(7) **EXAMINATION**  
(8) **BY MR. WEBER:**  
(9) **Q:** Good afternoon, Mr. Nourain. As you  
(10) recall, my name is Joseph Weber, and I represent  
(11) the Wireless Communications Bureau.  
(12) **A:** Good afternoon.  
(13) **Q:** This afternoon, you discussed with  
(14) Mr. Beckner the weekly reports which are  
(15) generated and discussed in your weekly meetings  
(16) at Liberty, correct?  
(17) **A:** That's correct.  
(18) **Q:** How much time in these weekly  
(19) meetings is typically dedicated to discussing  
(20) the weekly reports?  
(21) **A:** For me to understand perfectly, you  
(22) mentioned about the report which generated as  
(23) Price 21, Exhibit 21?  
(24) **Q:** We can go specifically to that. I  
(25) was talking more in general. Actually, Price 21

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(1) **Nourain**  
(2) is a copy of a weekly report, correct?  
(3) **A:** That's correct.  
(4) **Q:** I guess it's actually called an  
(5) installation progress report. But that is  
(6) generated weekly, correct?  
(7) **A:** That's correct.  
(8) **Q:** And then discussed in the weekly  
(9) meetings?  
(10) **A:** Yes. The meetings that we put that,  
(11) it could not - it's not set meeting, the  
(12) meeting between me and Mr. Ontiveros, it wasn't  
(13) a set meeting that has to be done a particular  
(14) time. Generally with the corporate executives,  
(15) so to speak, was Thursdays, so we would get  
(16) together about Tuesdays or Wednesdays and we  
(17) would just go over that. That meeting could  
(18) last as long as five minutes, just quick  
(19) discussions, or could involve other people and  
(20) we sat there and go over one hour or so.  
(21) So it wasn't really a set meeting,  
(22) probably just to discuss very briefly. Depends  
(23) how much of the microwave information he needed  
(24) for his report.  
(25) **Q:** You did not go to the Thursday

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(1) **Nourain**  
(2) meetings?  
(3) **A:** That is correct.  
(4) **Q:** In the time frame January-February  
(5) 1995, how familiar were you with what systems  
(6) were in operation and what systems were being  
(7) constructed? Let me be a little more specific.  
(8) If I had given a specific address in that time  
(9) frame, February 1995, would you have been able  
(10) just to tell me without checking any papers  
(11) whether or not that system was providing service  
(12) to the public at that time?  
(13) **A:** I would not.  
(14) **Q:** If I had asked you in February 1995  
(15) whether or not 639 West End Avenue was in  
(16) operation, what would you need to have done to  
(17) find out whether it was in operation?  
(18) **A:** By "operations," you have to - what  
(19) do you mean by "operations"?  
(20) **Q:** By actually providing service to the  
(21) public.  
(22) **A:** I have no document to back up what  
(23) was provided to the public because I would not  
(24) get involved. My job was to just construct the  
(25) microwave system.

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(1) **Nourain**  
(2) **Q:** Who was responsible for actually  
(3) activating the system?  
(4) **A:** By activating the system, if the  
(5) question is turning the system on, I was. But  
(6) providing service to the customer, that was  
(7) someone else's.  
(8) **Q:** Can you explain to me, then, what  
(9) the difference is between activating the system  
(10) and providing service to the public?  
(11) **A:** Activating the system means I would  
(12) turn on the microwave system bringing a signal  
(13) to the roof of the building. In order to  
(14) provide service to the customer, you have to  
(15) complete the distribution of the system and then  
(16) you have to get all the customers assigned and  
(17) do the installation process to be able to turn  
(18) the customer on. I was not involved in any of  
(19) those.  
(20) **Q:** I understand what you're saying  
(21) now. If I had asked you in February 1995 if the  
(22) system at 639 West End Avenue was activated,  
(23) would you have been able to tell me without  
(24) checking papers?  
(25) **A:** No, I would not. I have to check

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**Nourain**

[1] papers.  
[2] **Q:** What papers would you need to look  
[3] at to determine what systems were activated?  
[4] **A:** My own records of when actually the  
[5] equipment was constructed and we did the system  
[6] turn-up. It means alignment and activating the  
[7] system. I have to go through that date.  
[8] **Q:** And you kept records of when systems  
[9] were activated?  
[10] **A:** The records was kept - not the  
[11] exact record after we activated it. I could  
[12] probably know when the invoices came from the  
[13] contractor who did the work and based on that,  
[14] that would be indication that the job was done  
[15] and activated and partially would be my  
[16] inventory of the receiver equipment, which would  
[17] say that, for example, at a certain date what  
[18] was the account of the receivers for every  
[19] particular building, and then that would give us  
[20] some indication of when the location was  
[21] activated within a few days.  
[22] **Q:** But at that time frame, typically  
[23] you didn't always have a recollection of which  
[24] addresses were activated at which time? Just by  
[25]

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**Nourain**

[1] hearing an address you would not specifically  
[2] recall whether a system had been activated?  
[3] **A:** No, I do not. And I emphasize  
[4] again, by "activation" I mean just turning the  
[5] microwave system on.  
[6] **Q:** Do you know if it was the practice  
[7] to activate a system before installation to  
[8] subscribers began? Do you understand what I'm  
[9] asking?  
[10] **MR. BEGLEITER:** I think you should  
[11] repeat the question.  
[12] **Q:** Earlier, you described there was a  
[13] difference between providing service to the  
[14] public and the actual activation. Do you know  
[15] if ever the system was actually activating so it  
[16] was providing a signal to the rooftop before any  
[17] of the subscribers within that building had  
[18] actually been hooked up, therefore there's a  
[19] signal going to the building but nobody's  
[20] receiving it because nobody's hooked up yet?  
[21] **A:** No, that I don't recall. I think  
[22] what the customer was short - due to the fact  
[23] that we had to activate the system and provide  
[24] the service for the customer, the time of the  
[25]

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**Nourain**

[1] activation was very close to the time that we  
[2] were ready to go in and starting to sign up the  
[3] customer and activate the customer. Otherwise  
[4] we would not turn the system on for certain  
[5] period of time and let them run before they  
[6] started, unless after we - the date was set to  
[7] start activating the customer, and by the time  
[8] we started to complete this, the signal to the  
[9] roof, something changed and the customer stopped  
[10] process, said, okay, wait. There was some other  
[11] reasons, marketing reasons or other reasons that  
[12] I'm not so sure about. Then at that point  
[13] obviously the signal that was activated sat  
[14] there till they clear out some of the problems  
[15] they had. Other than that, we were relatively  
[16] very close to activating and starting servicing  
[17] customers.  
[18] **Q:** Do you know, then, if it was always  
[19] the case that you would activate before the  
[20] installations began?  
[21] **MR. BEGLEITER:** If he knows. It's  
[22] a foundation problem.  
[23] **MR. WEBER:** I did ask if he knew.  
[24] **A:** Could you repeat the question.  
[25]

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**Nourain**

[1] (The record was read.)  
[2] **A:** Yes.  
[3] **MR. WEBER:** I have nothing  
[4] further. Thank you.  
[5] **MR. BECKNER:** Before we close the  
[6] record, there's one thing, Bob, that I  
[7] should have mentioned before. Can we have  
[8] a stipulation as to the authenticity of  
[9] the other weekly reports that were in this  
[10] production without me having to have the  
[11] witness authenticate it?  
[12] **MR. BEGLEITER:** Whatever you see  
[13] from us with a Bates number as to  
[14] authenticity, no problem.  
[15] (Time noted: 3:50 p.m.)  
[16]  
[17]  
[18]  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]



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Nourain

[1]  
[2]  
[3] I, the witness herein, having read the foregoing  
[4] testimony, do hereby certify it to be a true and  
[5] correct transcript, subject to the corrections,  
[6] if any, shown on the attached page.

[7]  
[8]  
[9]  
[10] **BEHROOZ NOURAIN**

[11]  
[12] Subscribed and sworn to  
[13] before me this day  
[14] of 1996.

[15]  
[16]  
[17]  
[18]  
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Nourain  
CERTIFICATE

[1]  
[2]  
[3] STATE OF NEW YORK )  
[4] :ss  
[5] COUNTY OF NEW YORK )

[6]  
[7] I, JANE M. TELLER, a Shorthand  
[8] Reporter and Notary Public within and for the  
[9] State of New York, do hereby certify:  
[10] That BEHROOZ NOURAIN, the witness  
[11] whose deposition is hereinbefore set forth, was  
[12] duly sworn by me and that such deposition is a  
[13] true record of the testimony given by such  
[14] witness.

[15] I further certify that I am not  
[16] related to any of the parties to this action by  
[17] blood or marriage and that I am in no way  
[18] interested in the outcome of this matter.

[19] In witness whereof, I have hereunto  
[20] set my hand this day of 1996.

[21]  
[22]  
[23]  
[24] JANE M. TELLER  
[25]

**Lawyer's Notes**

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